

Application No. 10/551,827  
Amendment Dated November 2, 2009  
Reply to Office Action of September 1, 2009

**Amendments to the Drawings:**

Attachment: Replacement Sheets

Application No. 10/551,827  
Amendment Dated November 2, 2009  
Reply to Office Action of September 1, 2009

### **REMARKS**

The Office Action mailed September 1, 2009 has been carefully considered by Applicant. Reconsideration is respectfully requested in view of the foregoing amendments to the claims, drawings and specification, and the remarks that follow.

### **Specification**

The written description and drawings have been amended to point out the claimed directions and ends of the auxiliary sheet, which were inherently described in the specification and specifically shown in the drawings, as-filed. No new matter is added by these amendments.

### **Claim Rejections Under 35 U.S.C. §112**

Claim 60 has been rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. Claim 60 depends from claim 52, which has been amended so as to place the pair of elastic members of claim 60 on the end of the second gather sheet. Withdrawal of the rejection of claim 60 is thus appropriate and respectfully requested.

### **Claim Rejections Under 35 U.S.C. §102 and §103**

Claims 52-56, 59 and 61 have been rejected under 35 U.S.C. §102(b) as being anticipated by Mitsuhide Tako Japanese Patent Document No. JP H08-001058U (hereinafter "Mitsuhide"). Claims 57 and 58 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Mitsuhide.

The claims are amended to particularly point out and distinctly claim the subject matter of the present invention. As amended, the claims are believed allowable over the cited reference. Claim 57 is cancelled.

Claim 52

Claim 52 is amended to state that *the auxiliary sheet extends across the opening from a first end disposed between and adjacent the top sheet and the second gather sheet in the height direction and a second end disposed between the top sheet and the first gather sheet in the height direction so as to block access to the top sheet via the opening in the height direction and to define a genital holding space surrounded by the top sheet, the first gather sheet and the auxiliary sheet.* This structure and its related function is not disclosed in Mitsuhide.

The Examiner incorrectly reads the *first and second liquid impermeable gather sheets* of claim 52 onto elements 5, 7 of Mitsuhide. In fact, sheets 5, 7 overlap each other and do not define an opening therebetween *providing access to the top sheet*, per claim 52. Further, the Examiner reads the claimed *auxiliary sheet* onto element 9 of Mitsuhide. Element 9 does not extend *across the opening from a first end disposed between and adjacent the top sheet and the second gather sheet in the height direction and a second end disposed between the top sheet and the first gather sheet in the height direction to block access to the top sheet via the opening in the height direction.* This is shown, for example, in Figure 2 of the application, wherein access from the opening 6' to the top sheet 1 is prevented in the height direction H by the auxiliary sheet 9. Mitsuhide does not disclose this aspect.

Claim 52 is further amended to specifically state that the auxiliary sheet is *liquid impermeable*. This aspect is also not disclosed by Mitsuhide. The Examiner seems to admit this fact; however, she relies upon her own opinion as to what would be obvious in the art. The fact is that the liquid impermeable auxiliary sheet is not disclosed in the art in combination with the remaining structure of claim 52, and the significant advantages stemming therefrom are also not recognized or disclosed by the prior art. It is improper for the Examiner to rely upon her own opinion in support of a rejection, especially where such an opinion is the primary basis upon which the rejection is based; see MPEP §2144.

Application No. 10/551,827  
Amendment Dated November 2, 2009  
Reply to Office Action of September 1, 2009

The Applicant respectfully requests that the Examiner withdraw the rejection of claim 52 on this basis, or otherwise cite a reference that supports her unsubstantiated opinion.

Claim 52 is therefore allowable over the cited reference.

Claim 53

Claim 53 recites that the *auxiliary sheet is located on the other side of the opening relative to the first end of the top sheet in the length direction*. This aspect is certainly not shown in Mitsuhide, wherein the gather sheets 5, 7 overlap each other and do not provide access from an opening to a top sheet, per the Examiner's construction of claim 52. Claim 53 is thus also believed allowable.

Claims 54-61

Claims 54-61 depend directly or indirectly from claims 53 and/or 52 and are therefore believed allowable for the reasons stated above, as well as the subject matter recited therein.

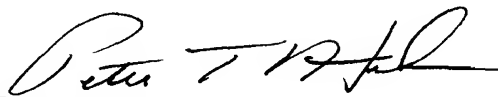
Conclusion

The present application is thus believed in condition for allowance. Such action is respectfully requested.

Respectfully submitted,

ANDRUS, SCEALES, STARKE & SAWALL, LLP

By



Peter T. Holsen  
Reg. No. 54,180

Andrus, Sceales, Starke & Sawall, LLP  
100 East Wisconsin Avenue, Suite 1100  
Milwaukee, Wisconsin 53202  
Telephone: (414) 271-7590  
Facsimile: (414) 271-5770